

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUEFF DIVISION**

CHARLES E. HAMNER
ADC #143063

PLAINTIFF

V.

No. 5:19CV00183-BRW-JTR

JOE PAGE III, Warden,
Tucker Unit, *et al.*

DEFENDANTS

ORDER

On June 18, 2019, Plaintiff Charles E. Hamner (“Hamner”) filed objections to a Partial Recommended Disposition alleging, for the first time, retaliation claims against Defendants Warden Joe Page III (“Page”), Major Rodney Ford (“Ford”) and Sergeant Justin M. Powell (“Powell”). *Docs. 4 & 5*. Based on these new facts, United States District Judge Billy Roy Wilson construed the objections as a Motion for Leave to Amend to add retaliation claims against Page, Ford and Powell, and remanded for further consideration. *Doc. 6. See Kaden v. Slykhuis*, 651 F.3d 966, 968 (8th Cir. 2011) (court must “construe a prisoner plaintiff’s objections to the magistrate judge’s report as a motion for leave to amend the original complaint”).

In his filing, Hamner alleges that, *in retaliation* for his use of the grievance procedure: (1) Page and Ford failed to protect him, on January 4, 2019, by forcing him to return to the same barracks where inmates who had attacked him two weeks earlier were housed; and (2) Powell failed to protect him and denied him due process,

on January 24, 2019, by ordering him to return to general population and, when he refused, writing a disciplinary against him for refusing a direct order. Finally, Hamner alleges that Ford told Powell to take the disciplinary action against him, in retaliation for Hamner's causing Ford to be investigated by internal affairs. Hamner will be allowed to proceed *only* with these additional retaliation claims against Page, Ford and Powell.¹

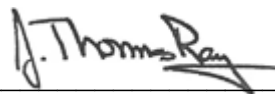
Accordingly, Hamner's Motion for Leave to Amend to add retaliation claims is GRANTED. The Clerk is directed to docket a copy of Hamner's "Objection" (*Doc. 5*) as a "First Amended Complaint."

The Clerk is directed to prepare a summons for Warden Joe Page III, Major Rodney Ford and Sergeant Justin M. Powell. The United States Marshal is directed to serve the summons, Hamner's Complaint (*Doc 2*), First Amended Complaint, the June 10, 2019 Partial Recommended Disposition and June 20, 2019 Order (*Docs. 4 & 6*), and this Order on them without prepayment of fees and costs or security therefor.²

¹Judge Wilson adopted the recommendations that: (1) Hamner be allowed to proceed with his failure to protect claims against Deputy Warden Tommy Hurst, Mental Health Counselor Nona Perry and Sergeant M. Culclager; (2) all claims against Sergeant Landers, Corporal Berryhill and Lieutenant Kimberly Riley be dismissed; and (3) Hamner's improperly joined claim, about potential constitutional violations at the Ouachita River Unit, be dismissed. *See Docs. 4 & 6*.

²If any Defendant is no longer an ADC employee, the individual responding to service must file a **sealed** statement providing the unserved Defendant's last known private mailing address.

IT IS SO ORDERED this 16th day of July, 2019.

A handwritten signature in black ink, appearing to read "J. Thomas Ray", is positioned above a horizontal line.

UNITED STATES MAGISTRATE JUDGE